

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

MARGUERITE VIERA, et al.,	:	
Plaintiffs	:	
	:	
v.	:	Case No. 3:04 CV 416 (CFD)
	:	
CACHAUNDRA TARVIN and	:	
JONATHAN TARVIN,	:	
Defendants.	:	

**RULING ON DEFENDANTS’ MOTION TO DISMISS**

Plaintiffs brought this suit seeking damages and equitable relief for their injuries resulting from a collision between their and defendants’ automobiles in Hempstead, New York. The complaint states that all plaintiffs are citizens of Connecticut, while the two defendants are alleged to be “citizens and residents of the State of New York.” Subject matter jurisdiction is based on diversity of citizenship of the parties and an amount in controversy in excess of \$75,000, pursuant to 28 U.S.C. § 1332. The defendants have filed a motion to dismiss under Fed. R. Civ. P. 12(b)(2) and 12(b)(5), alleging that this Court lacks personal jurisdiction over defendants, and also alleging insufficient service of process. In the event that their motion to dismiss is denied, defendants seek alternative relief of dismissal or transfer of this action under the doctrine of forum non conveniens.

For the reasons below, defendants’ motion is granted.

## **I. Discussion**

### **A. Personal Jurisdiction**

Defendants claim that the Court lacks personal jurisdiction over them because they do not meet the criteria of Connecticut's long-arm statute, Conn. Gen. Stat. § 52-59b, nor does their conduct satisfy the "minimum contacts" requirement of the Due Process Clause of the Fourteenth Amendment.

When a defendant challenges personal jurisdiction in a motion to dismiss, the plaintiff bears the burden of proving that the court has jurisdiction over the defendant. See Amerbelle Corp. v. Hommel, 272 F. Supp. 2d 189, 192 (D. Conn. 2003); see also Metro. Life Ins. v. Robertson-Ceco Corp., 84 F.3d 560, 566-67 (2d Cir. 1996); Ensign-Bickford Co. v. ICI Explosives USA, Inc., 817 F. Supp. 1018, 1026 (D. Conn. 1993). When no discovery has been conducted, the plaintiff only needs to assert facts constituting a prima facie showing that the defendant's conduct was sufficient for the court to exercise personal jurisdiction. See Amerbelle, 272 F. Supp. 2d at 192-93. Plaintiffs claim that the Court has personal jurisdiction because the defendants were properly served, and have submitted proof of service.

In diversity cases, personal jurisdiction is determined by the law of the state in which the district court sits. See Arrowsmith v. United Press Int'l, 320 F.2d 219, 231 (2d Cir. 1963). Connecticut General Statutes § 52-59b(a) governs the exercise of jurisdiction over nonresidents of the state. Under that statute, personal jurisdiction over a nonresident individual exists if the individual or his agent

- (1) Transacts any business within the state;
- (2) commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act;
- (3) commits a tortious act outside the state causing injury to person or

property within the state, except as to a cause of action for defamation of character arising from the act, if such person or agent (A) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (B) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; (4) owns, uses or possesses any real property situated within the state; or (5) uses a computer . . . or a computer network . . . located within the state.

In the instant case, plaintiffs have not alleged that defendants transact business, own property, or use computers within Connecticut. The tort for which plaintiffs seek recovery occurred outside Connecticut, so the only applicable portion of the statute is § 52-59b(a)(3).

Even that section, however, does not confer jurisdiction over all torts which injure Connecticut residents. In order to be sued in Connecticut, the out-of-state tortfeasor must be shown to regularly conduct business or derive revenue in the state. Plaintiffs have not asserted any facts or provided any evidence to make a prima facie showing that defendants meet this standard, nor have they shown that defendants have any contacts with the forum state. While effective service of process is a necessary element for the Court to exercise personal jurisdiction over nonresident defendants, plaintiffs must demonstrate that defendants in the first instance are subject to such service under the long-arm statute. Because plaintiffs have failed to meet this burden, the Court finds that it lacks personal jurisdiction over the defendants.

#### **B. Sufficiency of Process**

Defendants allege that plaintiffs' service of process was improper because they are not residents of Connecticut; therefore, plaintiffs were not permitted to serve defendants by mail, and must serve them personally at some time while they are in the State of Connecticut, which has not occurred.

In a Rule 12(b)(5) challenge to the sufficiency of service of process, the plaintiff bears the burden of establishing that service was adequate. See Schnall v. Annuity & Life Re Ltd., 2003 U.S. Dist. LEXIS 23258, \* 7 (D. Conn. Dec. 13, 2003). Plaintiffs here claim that service was proper; in support of that claim, they have submitted a copy of the summons, a state marshal's affidavit, and certified mail receipts indicating that the complaint and summons were served personally on the Connecticut Secretary of State as agent for the non-resident defendants, as well as mailed to defendants' personal residence. Such service appears to comply procedurally with Conn. Gen. Stat. § 52-59b(c), which provides that

Any nonresident individual . . . over whom a court may exercise personal jurisdiction . . . shall be deemed to have appointed the Secretary of the State as its attorney and to have agreed that any process in any civil action brought against the nonresident individual . . . may be served upon the Secretary of the State and shall have the same validity as if served upon the nonresident individual . . . personally. The process shall be served by the officer to whom the same is directed upon the Secretary of the State by leaving with or at the office of the Secretary of the State, at least twelve days before the return day of such process, a true and attested copy thereof, and by sending to the defendant at the defendant's last-known address, by registered or certified mail, postage prepaid, return receipt requested, a like true and attested copy with an endorsement thereon of the service upon the Secretary of the State. (emphasis added)

As discussed above, while plaintiffs' method of service appears to be adequate, they have failed to show that defendants are subject to service, because they have not proved that the Court may exercise personal jurisdiction over defendants. Therefore, plaintiffs' service of process fails as a matter of law.

## **II. Conclusion**

Defendants' Motion to Dismiss [Doc. #5] is GRANTED. Because this case is being dismissed on other grounds, the Court expresses no opinion on defendants' motion to transfer

under the doctrine of forum non conveniens. The Clerk is directed to close this case.

So ordered this \_\_\_11th\_\_\_ day of February 2005 at Hartford, Connecticut.

\_\_\_\_\_/s/ CFD\_\_\_\_\_  
**CHRISTOPHER F. DRONEY**  
**UNITED STATES DISTRICT JUDGE**